

OPEN MEETING ITEM

12/4/08



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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

EXCEPTION

2008 NOV 26 A 9:12

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

AZ CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF:

RESERVE OIL & GAS, INC., a Nevada  
corporation  
3507 North Central Avenue, Suite 503  
Phoenix, AZ 85012

ALLEN AND JANE DOE STOUT, SR.,  
husband and wife  
1309 West Portland Street  
Phoenix, AZ 85007-2102

ALLEN AND JANE DOE STOUT, JR.,  
husband and wife  
1309 West Portland Street  
Phoenix, AZ 85007-2102

Respondents.

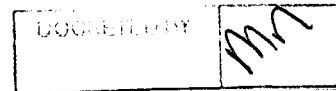
DOCKET NO. S-20437A-05-0925

SECURITIES DIVISION'S EXCEPTIONS TO  
RECOMMENDED OPINION AND ORDER

Arizona Corporation Commission

DOCKETED

NOV 26 2008



Pursuant to R14-3-110(B) of the Arizona Administrative Code, and based on the recommended Opinion and Order ("Opinion") issued by the Administrative Law Judge in this matter on November 17, 2008, the Securities Division ("Division") of the Arizona Corporation Commission hereby submits its Exceptions to the Opinion on the grounds that the Opinion places a burden of proof contrary to Arizona law. The Opinion concludes that the marital community should not be liable for the ordered restitution and penalties because the Securities Division did not establish that the martial community benefited. In Arizona, a debt incurred during marriage is presumed a community debt and the burden of rebutting the presumption is on the spouse seeking to avoid liability for the other spouse's debt.

## ANALYSIS

Findings of Fact number 50 concludes:

Lastly, with respect to Mr. Allen C. Stout's wife, Mrs. Eugenia Stout, the Division failed to present any evidence at all which established how or if, in any manner, the marital community benefited from the offering, and, therefore, her half<sup>1</sup> of the marital estate should not be held liable with respect to the payment of restitution and administrative penalties ordered hereinafter.

In this case, the obligation of the marital community is determined by the property law of Arizona, which is based on the concept of community property. Under basic principles of community property, debts incurred during marriage are presumed<sup>2</sup> to be community debts. *See, e.g., Schlaefer v. Financial Management Service*, 196 Ariz. 336, 339, 996 P.2d 745, 748 (Ct. App. 2000); *Hoffman Company v. Meisner*, 17 Ariz. App. 263, 267, 407 P.2d 83, 87 (1972). A spouse who seeks to avoid liability for the other spouse's debt bears the burden of establishing, by clear and convincing evidence,<sup>3</sup> that the obligation is not a community obligation. *Id.* In this case, Mrs. Stout had to prove by clear and convincing evidence that Mr. Stout's actions were not taken for the benefit of the community.<sup>4</sup> Mrs. Stout did not present any evidence to rebut the presumption. The debt resulting from Mr. Stout's actions—the restitution and penalty obligation imposed by this order—is a community debt.

The only burden borne by the Division is to join the spouse in the administrative proceeding so that the spouse has an opportunity to prove that the actions taken by the other spouse were not intended to benefit in some part the community and that the community should not be

<sup>1</sup> Each spouse does not own one-half of community property. Each spouse owns an undivided one-half interest in the community property. *See, e.g., Garn v. Garn*, 155 Ariz. 156, 159, 745 P.2d 604, 607 (Ct. App. 1987).

<sup>2</sup> A legal presumption "calls for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption." Black's Law Dictionary 1203 (7<sup>th</sup> ed. 1999).

<sup>3</sup> "Evidence indicating that the thing to be proved is highly probable or reasonably certain. This is a greater burden than preponderance of the evidence, the standard applied in most civil trials . . ." Black's Law Dictionary 577 (7<sup>th</sup> ed. 1999).

<sup>4</sup> Mrs. Stout is required to present clear and convincing evidence that Mr. Stout did not intend to benefit the community; actual benefit to the community is not required. *See Hofmann Company v. Meisner*, 17 Ariz. App. 263, 267, 407 P.2d 83, 87 (1972) (disregarding subjective intent and considering objective intent based on surrounding circumstances of transaction). Benefit to the community does not have to be the actor's primary goal; all that is required is that some benefit be intended for the community. The operation of a business is evidence of such intent because of the potential for earnings—earnings of either spouse are community property. *Id.*

1 liable for an order of restitution and penalties. *See* A.R.S. § 25-215(D).<sup>5</sup> A.R.S. § 44-2031(C)  
2 authorizes the Division to join Mrs. Stout in an administrative action. Mrs. Stout was properly  
3 served and appeared through counsel.

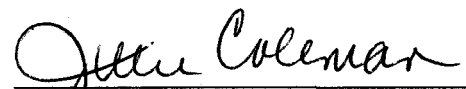
4 The conclusion stated in Findings of Fact number 50 imposes a burden upon the Division  
5 that is contrary to Arizona law and should be deleted from the Opinion.

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CONCLUSION

The Division requests that the legal conclusion contained in Findings of Fact number 50 be  
deleted. Additionally, the Division requests that Conclusions of Law number 9 and Order  
paragraphs 2, 3 and 5 be amended to include the marital community of Allen C. Stout and Eugenia  
Stout. Furthermore, the Division requests that Order paragraph 2 be further amended to state that  
the payment of administrative penalties shall be subordinate to the payment of restitution. Finally,  
the Division requests that Conclusions of Law number 11 and Order paragraph 8 be amended to  
state that only Respondent Mr. Allen L. Stout be dismissed from the proceeding and not found  
liable for any violations of the Securities Act. A copy of the Securities Division Proposed  
Amendment #1 to the Recommended Opinion and Order is attached hereto and incorporated by  
reference herein as Exhibit "A."

Dated this 26<sup>th</sup> day of November 2008.

By



Julie Coleman  
Chief Counsel of Enforcement for the  
Securities Division of the Arizona  
Corporation Commission

<sup>5</sup> "Except as prohibited in § 25-214, either spouse may contract debts and otherwise act for the benefit of the community. In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or obligation."

1  
2 ORIGINAL AND TEN (10) COPIES of the foregoing  
3 filed this 26<sup>th</sup> day of November 2008 with:

4 Docket Control  
5 Arizona Corporation Commission  
6 1200 West Washington  
7 Phoenix, AZ 85007

8 COPY of the foregoing hand-delivered this  
9 26<sup>th</sup> day of November 2008 to:

10 ALJ Marc Stern  
11 Arizona Corporation Commission/Hearing Division  
12 1200 West Washington  
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed this  
15 26<sup>th</sup> day of November 2008 to:

16 Paul J. Roshka, Jr., Esq.  
17 ROSHKA, DEWULF & PATTEN, P.L.C.  
18 400 East Van Buren Street, Suite 800  
19 Phoenix, Arizona 85004  
20 Attorneys for Respondents

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By: 

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EXHIBIT "A"

## SECURITIES DIVISION PROPOSED AMENDMENT #1

TIME/DATE PREPARED:

MATTER: Reserve Oil & Gas, Inc. et al.

AGENDA ITEM NO. \_\_\_\_\_

DOCKET NO: S-20437A-05-0925

OPEN MEETING DATE: December 4, 2008

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Page 12, lines 10-13

**DELETE:** Page 12, lines 10-13

Page 13, lines 9-10

**DELETE:** Page 13, lines 9-10

**INSERT:** "Pursuant to A.R.S. §§ 25-214 and 25-215, this order of restitution and administrative penalties is a debt of Allen C. Stout and the marital community of Allen C. Stout and Eugenia Stout."

Page 13, lines 14-15

**DELETE:** Page 13, lines 14-15

**INSERT:** "Respondent Mr. Allen L. Stout should be dismissed from the proceeding and not found liable for any violations of the Act."

Page 13, lines 22-27

**DELETE:** Page 13, lines 22-27

**INSERT:** "IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2036, Respondents Reserve Oil & Gas, Inc., Mr. Allen C. Stout, and the martial community of Mr. Allen C. Stout and Eugenia Stout, jointly and severally, shall pay as and for administrative penalties: for the violation of A.R.S. § 44-1841, the sum of \$5,000 and for the violation of A.R.S. §44-1842, the sum of \$5,000; and for violation of A.R.S. § 44-1991, the sum of \$10,000. The payment obligations for these administrative penalties shall be subordinate to the restitution obligations ordered herein and shall become immediately due and payable only after restitution payments have been paid in full or upon Respondents' default with respect to Respondents' restitution obligations."

Page 14, line 28 through page 15, line 4

**DELETE:** Page 14, line 28 through page 15, line 4

**INSERT:** "IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2036, the Respondents Reserve Oil & Gas, Inc., Mr. Allen C. Stout, and the marital community of Mr. Allen C. Stout and Eugenia Stout, jointly and severally, shall pay the administrative penalty ordered hereinabove the amount of \$20,000 payable by either cashiers' check or money order payable to the "State of Arizona," and presented to the Arizona Corporation Commission for deposit in the general fund for the State of Arizona."

Page 14, lines 9-14

**DELETE:** Page 14, lines 9-14

**INSERT:** "IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents Reserve Oil & Gas, Inc., Mr. Allen C. Stout, and the marital community of Mr. Allen C. Stout and Eugenia Stout, jointly and severally, shall make restitution in the amount not to exceed \$155,000 which restitution shall be made pursuant to A.A.C. R14-4-308 subject to legal set-offs by the Respondents and confirmed by the Director of Securities, said restitution to be made within 60 days of the effective date of this Decision."

Page 15, lines 1-2

**DELETE:** Page 15, lines 1-2

**INSERT:** "IT IS FURTHER ORDERED that Respondent Mr. Allen L. Stout is not in violation of the Act and is hereby dismissed from the proceeding."